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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. AD/11-12 /2007, AD/1/2008 Date **06/04/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
(*) AUTOMOTIVE TYRES IMPORTERS ASSOCIATION

CW-87,SANJAY GANDHI TRANSPORT NAGAR ,
NEW DELHI.

AUTOMOTIVE TYRES IMPORTERS ASSOCIATION & OTHERS Appellant

Vs

DESIGNATED AUTHROITY & OTHERS Respondent

I am directed to transmit herewith a certified copy of **Final order No. AD/1-4/ 2011 CU[DB]** dated 31.03.2011 passed by the Tribunal under the Customs Tarrif Act, 1975.

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent **SECRETARY, REVENUE**
MIN.OF FINANCE,GOVT. OF INDIA
NORTH BLOCK, NEW DELHI

2. Adv. / Consult

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. M/S ACOGOA, 2/5136,KRISHAN NAGAR, GANGA MANDIR MARG, DEV NAGAR, NEW DELHI
16. SPS to Hon'ble President

(*) See rest of the addresses at back.

Assistant Registrar
(Customs Appeal Branch)

M/S AUTOMOTIVE TYRE MFGR. ASSO.
PHD HOUSE, 4TH FLOOR,
OPP. ASIAN GAMES VILLAGE ROAD,
SIRI INSTITUTIONAL AREA, NEW DELHI.

MR. RAJESH SHARMA, ADV.
K-3/A, SAKET,
NEW DELHI.

THE DESIGNATED AUTHROITY,
DIRECTORATE GENERAL ANTI-DUMPING &
ALLIED DUTY, UDYOG BHAWAN,
MINISTRY OF COMMERCE,
NEW DELHI.

SHANDONG JINYU TYRE CO. LTD.
DAWANG DEVELOPMENT ZONE,
DONGYING, SHANDONG,
CHINA P.R.

THAI BRIDGESTONE CO. LTD.,
14/3, PHAHOLYOTHIN RD.,
T. KLONGNUENG, A. KLONG LUANG,
PATHUMTHANI,
THAILAND – 12120.

M/S TATA MOTORS,
BOMBAY HOUSE,
24, HOMI MODY STREET,
MUMBAI – 400 001.

ALL INDIA TYRE DEALERS FEDERATION,
865/32, GURU NANAK HOUSE,
S.P. MUKHERJEE MARG,
DELHI – 110 006.

MR.PRABHAT KUMAR, ADV.
B-51(BASEMENT) SARVODAYA ENCLAVE,
NEAR MOTHER INTERNATIONAL SCHOOL,
NEW DELHI

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
ANTI-DUMPING BENCH

Anti Dumping Appeal Nos.11 to 13 of 2007

Anti Dumping Appeal No.01 of 2008

(Arising out of Final Finding dated 29.06.2007 issued by the Designated Authority and Customs Notification No.88/2007 dated 24.07.2007 issued by the Ministry of Finance)

For approval and signature:
Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Dr.Chittaranjan Satapathy, Member (Technical)
Hon'ble Mr.D.N.Panda, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	yes

1.M/s.Automotive Tyre Importers Association — Appellants
2.M/s.All India Confideration of Goods Vehicle Owners' Association
3.M/s.Automotive Tyre Manufacturers Association
4.M/s.Shandong Jinyu Tyre Co.Ltd.

Vs.

DA/MOF — Respondent

Present for the Appellant : Shri Shailender Saini & Ms.Rashmi Malhotra, Advocates (in appeal AD/11,12/07 & 01/08)
Present for the Respondent: Shri Ameet Singh, Advocate for the DA
Present for the interested Parties: Ms.Reena Khair & Sh.Rajesh Sharma, And appellants in Appeal No.AD/13/07, Advocates

Coram: Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Dr.Chittaranjan Satapathy, Member (Technical)
Hon'ble Mr.D.N.Panda, Member (Judicial)

Date of Hearing: 22.03.2011
Date of Decision: 31.03.2011

Final **ORAL ORDER NO.** AD/1 to 4/11

PER: Dr. Chittaranjan Satapathy

Appeal Nos.AD/11,12,13/07 & AD/01/08

On a complaint filed by the Automotive Tyre Manufacturers' Association (Domestic Industry), the DA initiated anti-dumping investigations leading to issue of:-

(i) Final Finding Notification dt.29.6.2007

(ii) Customs Notification No.88/2007 dt.24.07.2007 imposing anti-dumping duty on tyres, tubes and tyre-flaps (subject goods).

2. In appeal Nos.AD/11 & 12/07 and AD/01/08, the final findings and imposition of anti-dumping duty have been challenged respectively by:-

(i) Automotive Tyres Importers Association (ATIA),

(ii) All India Confederation of Goods Vehicle Owners' Association (ACOGOA).

(iii) M/s.Shandong Jinyu Tyre Co.Ltd.(Exporter).

Learned Advocate, Shri Sailender Saini appearing for the first two appellants (ATIA and ACOGOA), who claim to represent the users of the subject goods in India, and the third appellant, who is a foreign exporter, makes common submissions opposing the final findings and the levy.

3. Ms.Reena Khair, learned Advocate appearing for the Domestic Industry supports the impugned final findings and the levy while questioning the locus standi of the first two appellants (ATIA and ACOGOA). She states that ATIA and ACOGOA have not demonstrated their credentials to be considered as Interested Party in the proceedings before the D.A. To be an Interested Party, only business associations, a majority of members of which are importers qualify under the definition

in Rule 2 (c) of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 known as the Ant-Dumping Rules. ATIA and ACOGOA have furnished no such information regarding their eligibility to be considered as Interested Parties despite specific objections raised by the Domestic Industry. She states that ATIA and ACOGOA can not also be considered as aggrieved persons before the Tribunal having not produced any information regarding their credentials including registration under any law and their objects and purpose. She states that neither the associations nor the majority of their members have filed the importer questionnaire.

4. In reply, the learned Advocate, Shri Saini merely produces a copy of letter dated 22.9.06 from a chartered accountant (without enclosures) addressed to the Director in the DA's office purportedly furnishing information in respect of 4 members of ATIA. He also produces a copy of ACOGOA's letter fy/16/10/2006 to the Director in D.A.'s office intimating that ACOGOA is an association of State/District level Truck Owners' Associations and that its object is to promote the interests of the people engaged in goods transport business. These two copies of letters submitted by the learned Advocate, Shri Saini are grossly deficient in proving the credentials of ATIA and ACOGOA as 'Interested Party' under the Anti-Dumping Rules. Rule 2(c) of the said Rules reads as follows:-

"Interested Party" includes –

(i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association, a majority of which are producers, exporters or importers of such an article;

(ii) x x x x x x

(iii) x x x x x x

ATIA and ACOGOA do not qualify as 'Interested Party' on the basis of the two documents furnished by the learned Advocate, Mr.Saini. There is also no finding by the DA holding them to be 'Interested Party' which he was required to give on the face of objection raised by the Domestic Industry. ATIA and ACOGOA cannot also be considered as Aggrieved Persons in the proceedings before the Tribunal as Interested Party.

5. We have also considered the arguments advanced on merit on behalf of the appellants ATIA and ACOGOA and the foreign exporters by their common advocate, Shri Saini. He is not basically challenging the DA's findings on dumping. His challenge is against the findings on injury and causal relationship. He states that the share of imports compared to total consumption is insignificant and cannot be a cause of injury to the domestic industry. He also states that many of the economic indicators taken into consideration by the DA reveals that the domestic industry has not suffered any injury and some of the other negative indicators are due to other factors and not attributable to subject imports. He argues that sales, production, ability to raise capital investments, employment and productivity of the Domestic Industry has increased as also its market share, capacity utilization etc. which do not justify imposition of anti-dumping duty. On behalf of the appellant exporter, he also makes a point that the DA has not compared like goods for the purpose of the present investigation.

6. Ms.Reena Khair, learned Advocate for the domestic industry and Mr.Ameet Singh, learned Advocate for the DA argue in support of the levy stating that the findings of the DA are detailed on each aspects of the case examined by him. He has taken an overall view after analysing all factors and the same cannot be faulted with. The Domestic Industry has taken additional grounds in its appeal seeking re-determination of dumping margin without accepting the Chinese exporters' belated and incomplete response, and levy of anti-dumping duty in rupee terms However, these grounds were not pressed during arguments before us.

7. We have considered arguments advanced before us as well as the case records relating to merits of the imposition of anti-dumping duty in this case. We find that the DA has duly considered all aspects of the case and has come to a reasoned finding considering various parameters. In particular, we note the following findings of the DA in the context of arguments advanced before us:-

(i) There is no difference in subject product imported from China and Thailand, and produced by the domestic industry (para 18).

(ii) Dumping is established in respect of the subject goods and the dumping margin is in the ranage of 233% to 294% (para 56).

(iii) Imports of subject goods from the subject countries have increased in absolute terms as well as in relation to imports into India and in relation to total demand in India. Resultant increase in market share of dumped imports show adverse volume effect (para 61).

(iv) Effect of dumped imports on the price in the domestic market has been adverse for the reason stated in para 62 of the Final Findings.

(v) Various economic factors have been analysed by the DA in paragraph 63 onwards and arguments against injury have also been considered by the DA in paragraph 77 onwards before coming to an overall conclusion in para 79 of the Final Findings that the Domestic Industry has suffered material injury.

(vi) Similarly, after a detailed examination, the DA has arrived at a fair conclusion that the dumped imports have caused material injury.

8. We find that the DA has taken into consideration the provisions of Rule 11 of the Anti-Dumping Rules and the Annexure-II to the Rules referred to therein in regard to determination of injury. He has examined both the volume effect and the price effect of the dumped imports referred to in clause (i) of the said Annexure II and he has examined the relevant economic factors referred to in clause (iv) of the said Annexure II. It is well settled that the DA is required to examine the overall impact of the dumped imports by evaluation of all the economic factors as a whole and not be guided by evaluation of any particular economic criterion. That is what has been done in this case. The DA himself has fairly recorded his findings on evaluation of various economic factors and has then taken an overall view. We need not repeat here his detailed findings recorded in paragraphs 62 to 78 which are objective and fair and these findings have led him to the conclusions he has drawn in paragraph 79 of the Final Findings. It is clear from his conclusions that he has also taken into consideration parameters which have not shown any decline such as sales and production. But his overall conclusion is based upon various other factors such as significant increase in volume of dumped imports, landed price of dumped imports are significantly below the selling price and non injurious price of domestic industry, existence of price under-cutting, consistent decline in

landed price of dumped imports, decrease in market share of domestic industry, decline in profit of the domestic industry per unit of sales and deterioration in return on capital employed etc. As such D.A.'s overall conclusions on material injury is justified. Similarly, the conclusion of the DA on causal link in paragraph 83 follows a fair analysis and cannot be faulted with.

9. No arguments have been advanced before us to demonstrate that the finding of the DA in regard to determination of dumping, injury and causal relationship between the two, are either malafide or perverse. The quantum of anti-dumping duty recommended by the DA and imposed by the Government has also not been assailed before us. Under these circumstances, we find that no reason to interfere with the impugned Final Findings or the customs notification imposing anti-dumping duty. Consequently, all the 4 appeals are dismissed.

(Pronounced in the open court on 31.3.2011)

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(DR.CHITTARANJAN SATAPATHY)
MEMBER (TECHNICAL)

(D.N.PANDA)
MEMBER (JUDICIAL)

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